

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 90-08  
(September 28, 1990)

**Avoiding the Appearance of Partiality in Cases  
Involving Former Law Partner and Friend**

**Issue**

Is it ethically permissible for a full-time juvenile court judge pro tem to hear cases presented by an assistant attorney general and former partner in private practice where there was a landlord/tenant relationship between the two, and they continue to be social friends who periodically have lunch together and exchange small gifts on their respective birthdays?

**Answer:** Yes, with a caveat.

**Discussion**

A lawyer appointed to the bench is not expected to sever all personal relationships he had prior to becoming a judge. It is expected that the judge will maintain previous existing friendships. Only when the personal relationship creates the appearance of partiality must recusal occur. "[F]riendships within the bench and the bar do not, of themselves, cause prejudice." *Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453, 456 (1983).

In order to avoid the appearance of impropriety or partiality whenever a friend or former law partner appears before a judge, the judge should disclose the relationship to opposing counsel and give counsel the option of requesting that the judge not preside in the case. If the judge reasonably does not believe that such disclosure would be sufficient to avoid the appearance of impropriety, then the judge should take recusal whenever a friend or former law partner is scheduled to appear.

The test for the appearance of partiality is an objective one. Would a disinterested observer who was aware of all the facts have any doubt that justice would be done in the case in question. *United States v. Murphy*, 768 F.2d 1518 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986). Factors to be considered by the judge in deciding on recusal include how long ago the professional relationship ended and the closeness of the friendship. Practical aspects of the question are brought into focus when considering judges in rural or semi-rural settings, and even some metropolitan areas, where havoc in the administration of justice could occur if friendship with a lawyer was tantamount to prejudice on the part of the judge. *In re Estate of Carlton*, 378 So.2d 1212, 1220 (Fla. 1979).

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**References**

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*Matthews v. Rodgers*, 279 Ark. 328, 651 S.W.2d 453, 456 (1983).

*U.S. v. Murphy*, 768 F.2d 1518 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986).